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Sent: Thursday, April 14, 2011 2:04 PM

To: Macaulay, Terry@DeltaCouncil

Cc: Samsam, Kevan@DeltaCouncil; schwinn.karen@epamail.epa.gov; Melanie Rowland; Barajas, Federico; Milligan, Ronald E; Castleberry, Dan; Grim, Mary; Michael G SPK Nepstad; Mike Jewell; Idlof, Patricia S; Norris, Jennifer; 'Michael Tucker'; hagler.tom@epamail.epa.gov; Luana Kiger; Fujii, Roger; Arroyave, Pablo R; Brown, Howard; Lohofener, Ren; Belin, Letty; Glaser, Donald R; 'Deanna Harwood'; Schlueter, Rosalyn A (Rose); Rod McGinnis; Shouse, Michelle K.@USGS; Keay, Jeffrey A; Allen, Kaylee; Monroe, James; Chris Yates; Will Stelle; Jeff McClain; Morales, Francia S; Pennell, Becky; Vendlinski.Tim@epamail.epa.gov

Subject: US EPA Comments on DSC Delta Plan Draft 2

Dear Ms. Macaulay:

Thank you for the opportunity to review Delta Stewardship Council's Draft 2 of the Delta Plan. We appreciate coordination with US EPA as the Delta Plan may affect federal Clean Water Act programs and mandates in the Delta. The Delta Plan is primarily a broad programmatic document, without a lot of detail in many areas and Draft 2 appears to be in a very preliminary state for some sections that interact with US EPA programs. Given that, our review is also preliminary. Inconsistencies with federal Clean Water Act programs may not become apparent until more detailed versions of the Delta Plan are released or when specific projects or specific programs are implemented pursuant to the Delta Plan.

That said, our initial review of Delta Plan, Draft 2, did not identify any direct conflicts with EPA programs. However, some of the language used to describe water quality programs is unclear and potentially unintentionally limiting. For example, WQ P1 does not say how a consistency determination will be made, what activities constitute full compliance with a Total Maximum Daily Load program (TMDL), and limits compliance to water quality impairments covered by a TMDL. It appears that the use of the term "TMDL" may be unintentionally limiting by referring to a specific tool designed to address water quality impairments, especially in cases where no TMDL has been established. The Delta Plan could also refer to other programs, including regulatory mechanisms such as waste discharge requirements (WDRs), waivers of WDRs, national pollutant discharge elimination system (NPDES) and stormwater permits, and other activities that protect and improve water quality, such as low impact development (LID) practices and policies. Recommendations for providing clarity and removing potential limitations include:

1. WQ P1. Describe in detail the process for making a consistency determination with respect to the water quality policies.

2. WQ P1. Replace the language "full compliance with TMDL obligations" with something like "reduced pollutant loads and progress toward compliance with water quality objectives for pollutants that are causing water quality impairments in the Delta." Specifically identify all mechanisms such as stormwater permits, NDPES permits, waivers of and full waste discharge requirements, in addition to TMDL programs.
3. Consider including water quality policies that support and enhance the Water Boards efforts (TMDLs, WDRs, NPDES permits, stormwater quality programs) to meet water quality standards and protect surface water quality for consistency with Delta Plan objectives. Examples of policies that reduce contaminant loadings to Delta waterways may include LID designs, maintaining the natural hydrograph and runoff pattern, minimizing impervious surfaces, and requiring buffer zones around streams and waterways. More examples of low impact development designs and green infrastructure can be found here http://www.epa.gov/owow_keep/NPS/lid/index.html.
4. WQ R1. Insert the word "numeric" in front of nutrient when discussing a nutrient objective.
5. WQ R3. Replace the words "Total Maximum Daily Load" with "Basin Plan Amendment" to capture the criteria setting process, as well as the load and wasteload allocations associated with the TMDL.

Please contact myself or Karen Schwinn (schwinn.karen@epa.gov, 415-972-3472) at US EPA if you have any questions or would like to discuss our comments further.

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<http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html>



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April 7, 2011

Ms. Karen Schwinn
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Dear Ms. Schwinn: *Karen*

Identification of Potential Conflicts between Delta Plan and Federal Requirements

This letter formally follows up our request at the March 22, 2011, Delta Plan coordination meeting to identify, by April 15, 2011, potential conflicts between the proposed Delta Plan regulatory policies and those of your agency. The Delta Plan schedule is very aggressive and any substantive changes must be made before the June 2011 draft Delta Plan is released.

Background:

The Delta Stewardship Council is an independent State agency created by the California Legislature in November 2009 to develop and implement, by January 1, 2012, a Delta Plan that will further the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals must be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. The Delta Plan is to be an enforceable, comprehensive, and long-term management plan for the Delta and Suisun Marsh. The Council published the second staff draft of the Delta Plan on March 18, 2011, which includes both mandatory "regulatory policies" and discretionary "recommendations". Two additional staff drafts will be produced in April and May of 2011. The draft Delta Plan and its corresponding Environmental Impact Report will be released for public comments under the California Environmental Quality Act in June 2011.

In developing the Delta Plan, the Council is required to consult with federal agencies which have responsibilities in the Delta. The Delta Plan is required to be consistent with the federal Coastal Zone Management Act of 1972 (or an equivalent mechanism), Section 8 of the federal Reclamation Act of 1902, and the federal Clean Water Act.

We are requesting your help in identifying areas where the regulatory policies and recommendations of the Delta Plan may be inconsistent with the aforementioned federal Acts or with any other federal regulation or policy. In May 2011, we plan to consult with all federal agencies that identify potential conflicts to address the inconsistencies.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

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If you have any questions or need additional information, please call me at (916) 445-5825 or Kevan Samsam of my staff at (916) 445-5011.

Sincerely,



Terry Macaulay, PE
Acting Deputy Executive Officer

cc: David Nawi, Senior Advisor to the Secretary, U.S. Department of the Interior
Kevan Samsam, Delta Stewardship Council
Joe Grindstaff, Executive Officer, Delta Stewardship Council
Keith Coolidge, Acting Chief Deputy Executive Officer, Delta Stewardship Council